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December 9, 2005

Office of Environmental Information (OEI) Docket  
U. S. Environmental Protection Agency  
Mail Code: 28221T  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attention: Docket ID No. TRI-2005-0073

**Re: Comments on Proposed changes to Toxics Release Inventory Reporting Requirements  
(70 Fed. Reg. 57822, (October 4, 2005))**

Following are comments of the Delaware Department of Natural Resources and Environmental Control (DNREC) regarding the proposal to increase eligibility for use of the Form A under the Toxics Release Inventory (TRI) reporting requirements. (*70 Federal Register 57822-57847, (October 4, 2005)*).

The Toxics Release Inventory provides information that is not only crucial for making decisions concerning health and the environment, but has also proven a valuable tool for more efficient environmental management. In Delaware, officials have found the TRI program extremely helpful in setting environmental and public health policy. In addition, TRI reporting has helped promote the implementation of Environmental Management Systems (EMS), and serves as a component. Reductions in TRI numbers are often incorporated directly into EMS goals. Pollution has been reduced as a direct result of facility participation in the TRI program, and now is not the time to turn back the clock on a successful program.

**We do not favor any of the proposed changes for Form A reporting.**

- **The burden reduction estimates being used as justification for this proposed rule change are incomplete, misleading, and potentially inaccurate. We do not agree the proposed changes provide sufficient burden reduction to justify their implementation.**
  - The claim of 165,000 hours is inflated. This amount consists of 47,000 claimed hours resulting from not completing 2,703 PBT Form R's and 117,000 hours from not completing 12,200 non-PBT Form R's. When discussing the implementation of the Form A option for PBT chemicals, the proposed rule states "EPA believes that many such facilities may choose to continue using Form R, since the burden of completing Form R for such facilities is small, and Form R allows them to show the public that they are neither releasing nor generating and managing as waste any of the PBT chemicals" (*70 Fed. Reg. 57839*). For non-PBT's, the Federal Register notes "it is important to note that actual burden savings may be considerably less if historical rates of Form A use continue in the future" (*70 Fed. Reg. 57842*). As noted by EPA within the proposed rule, when the 1994 rulemaking established the Form A option,

“only about half of the eligible respondents actually switched to Form A” (70 Fed. Reg. 57841-42). This fact alone demonstrates that the additional effort necessary to complete a Form R versus a Form A is not significant. We agree with these EPA statements, and thus do not see any need or benefit that will result from this proposal.

- The disparity between burden estimates presented in the proposed rule indicates an inadequate understanding of the true burden associated with TRI reporting. Without an adequate understanding of the true burden, attempts to quantify burden reductions are very questionable. Results from EPA’s alternate methodology proposed in the rule for calculating the form completion burden vary significantly from previous estimates. As EPA states in the proposed rule, “The resulting burden estimates derived from that engineering analyses for PBT and non-PBT chemicals are substantially lower than the current burden estimates in the OMB-approved Information Collection Request supporting statement for Form R” (70 Fed. Reg. 57827). Times to complete a Form A instead of a Form R are presented in the following tables below.

	OMB BASIS Form R (Hours)	OMB BASIS Form A (Hours)	OMB SAVINGS (Hours)
PBT’s	47.1	31.6	15.5
NON-PBT’s	25.2	17.6	7.6

	NEW ENGINEERING BASIS – FORM R	NEW ENGINEERING BASIS – FORM A	NEW ENGINEERING SAVINGS BASIS (Hours)
PBT’s	6.7	1.4	5.3
NON-PBT’S	7.6	1.4	6.2

The new engineering estimates are notably different from current calculation results, so we do not know what the true burden or burden reduction is, if any.

- The burden reduction estimates compiled by EPA fail to account for several additional issues. They do not appear to account for additional activities necessary to update/train facility representatives on the changing requirements. Even more importantly, for states and other organizations which actively compile, analyze and distribute the data, the burden reduction estimates do not account for additional efforts necessary to track and convey the changes in the reporting requirements to citizens and other public groups who make use of the data. Changes to the reporting requirements can cause significant complications when evaluating overall trends and conducting cross-year analyses. In many cases, re-programming databases to account for changes in the basis on which data is reported requires significant time and effort. When these additional aspects are considered, there may be no positive burden reduction at all.
- Facilities must complete some, if not most, of the calculations or estimates to determine eligibility to use Form A, so they have developed some, if not most, of the

numbers to report. As stated in the proposed rule concerning Form A Eligibility for PBT chemicals,

“This approach allows facilities that report zero or NA for items a, b, c, and d of Section 8.1 of Form R (Zero Total Disposal or Other Releases) for a PBT chemical (except dioxin and dioxin-like compounds) and do not have any releases included in Section 8.8, but may have other waste management information in Section 8.2 through 8.8 totaling 500 pounds or less, to now use the Form A Certification Statement. Section 8.8 of the Form R details the non-production related activities occurring at a facility. These could be releases or other waste management quantities. For this approach “releases” reported in Section 8.8 must be zero, but facilities may have other waste management quantities in Section 8.8, which will be totaled with the production related waste management quantities found in Sections 8.2-8.7” (70 Fed. Reg. 57838).

This passage clearly demonstrates that most of the Form R data elements must still be calculated to determine if a Form A can be used, so why should this data go unreported?

- The claim that burden reduction would accrue to facilities using Form A because the maximum amount on site is not reported on this form and thus would not need to be calculated (70 Fed. Reg. 57841) may not be correct in many situations. This amount is required for EPCRA Sections 311/312 reporting, and depending upon how the substances were reported under 311/312, it may have already been calculated for the report due on March 1. It is just entered again in Section 4 on Form R.
- **We believe that the proposed rule is inconsistent with the intent and direction of the recently expanded PBT information which disallowed Form A for PBT reporting and implemented reduced reporting thresholds for PBT chemicals.**
  - As noted in (64 Federal Register 58732, (Oct. 29, 1999)), EPA cited concerns at that time over releases and other waste management of these chemicals at low levels and said that, based on the information available to the Agency at that time, EPA believed that the level of information from Form A was insufficient to do meaningful analysis on PBT chemicals.
  - We believe that this approach was correct then and is correct more than ever now, so in order to retain the ability to do meaningful analysis on PBT data, the current reporting requirements should be retained or made stronger, not weaker.
  - For Delaware, fifty percent of the reports for benzo(g,h,i)perylene, and eighty-five percent of the reports for polycyclic aromatic compounds that contain data now would contain no numerical data under this proposal.
- **While EPA has stated in a press release that the proposed rule “provides new incentives to facilities to emit less”, the proposed rule actually provides a significant disincentive.**
  - Although this proposal does provide a new incentive to facilities to emit less in order to be able to take advantage of the shorter Form A if they can reduce their PBT waste management totals below 500 pounds, it is at the same time negative for non-PBT chemicals, in that the eligibility threshold is being raised from 500 pounds to 5,000 pounds and thus does not encourage facilities to reduce their emissions. This second part should be described as a “disincentive” to emit less, since facilities currently falling under the 500 pound level would be able to increase amounts up to the 5,000

pound level and still use the Form A. Considering the number of potential PBT Form A reports compared with the number of non-PBT Form A reports, it would appear that the disincentive aspect of the rule change could have a much larger impact than the suggested incentive aspect. We suggest as a more positive way to achieve burden reduction, that whenever possible, stronger, not weaker, encouragement be given to the facilities for reducing or discontinuing use of TRI chemicals.

- **An increase in the Form A threshold does a disservice to our citizens because it no longer allows them access to important data.**

- An analysis using 2004 data shows that about 35% of our Form R reports and 29% of our PBT reports would become eligible for Form A reporting under the proposed threshold increase. See Attachment A for further detail. All the numerical data associated with these reports would be lost under the new proposal. While these amounts may be relatively small when compared to the overall totals, these numbers represent important information to citizens in the communities where these facilities operate.
- For example, 21% of the Delaware TRI facilities would no longer be required to report any numerical data to the program, and thus the communities in which these facilities operate would not receive any data from these facilities regarding their use of toxic chemicals.
- Small facilities tend to have a larger percentage of their total production-related waste as on-site releases to the environment than do larger facilities. In Delaware, on-site releases constitute about 11% of all TRI production-related waste for all facilities combined. However, for the chemicals and facilities previously noted that would be eligible for Form A non-PBT reporting, on-site releases constitute 45% of production-related waste.
- In addition, 100% of the numerical data in Delaware would be lost for 25 chemicals, including naphthalene, toluene diisocyanate, tetrachloroethylene, and formaldehyde, a known carcinogen. Eighty percent of the reports for methyl tert-butyl ether and three-fourths of the reports for methyl methacrylate could be converted to Form A containing no numerical data.
- Concerning PBT chemicals, the proposed rule states "The Agency anticipates this will have a minimal impact on the national reports TRI generates annually because it is a low quantity of waste and will have a negligible impact on national totals" (*64 Fed. Reg. 578414*). Concerning non-PBT chemicals, it states the proposal "still allows the TRI program to report on a substantial majority of the releases" (*64 Fed. Reg. 57842*). We disagree with the implied focus of TRI represented by these statements. On a national level, capturing the largest percentage of reportable amounts is a worthy goal, but this must be balanced with providing information useful at the community level, which is a primary focus of the Emergency Planning and Community Right-to-know Act. While a TRI report from a facility with small annual reportable amounts may not be significant on a national basis, it can be extremely important to the citizens living next to the facility.

- **We disagree that in order to capture "a substantial majority of the releases" the direction would be to increase reporting thresholds.**

- Although reporting thresholds were increased once before, when Form A was created, it sets a dangerous precedent by again increasing reporting thresholds. If thresholds

for Form A eligibility are increased now, it will be easier to increase thresholds for other reporting segments in the future, with predictable further loss of data.

- We believe that these changes should not be made, nor should any changes be made, unless some clear benefit can be demonstrated for the TRI data users.
- **We disagree with the general approach of changing reporting requirements because it will lead to confusion among data users.**
  - As noted in the proposed rule, "Using a different basis for reportable amounts for PBT and non-PBT chemicals does pose some risk of confusion among reporters" (64 *Fed. Reg.* 57839). If this is true, and we agree that it will be, then there certainly will be confusion among data users who, as a group, are undoubtedly less experienced in analyzing data. Comparison on an equal basis will not be possible. The data users will probably not fully remember or be able to understand how to compare the differences between data prepared using prior years' basis and data prepared using the new basis, or the difference between PBT and non-PBT data presented in the same year.
  - Changing the basis for reporting will make comparisons difficult, if not meaningless. Delaware actively collects, manages/analyzes, and publicly distributes TRI data. We believe that it is our responsibility to collect complete and accurate data from the facilities releasing toxic chemicals into the environment and report that data to our citizens. We also believe that it is the right of the communities near these releases to have access to this data. We use actual amounts of releases, not just a count of reports, to report chemical releases and other activity at the facilities to our citizens, and actual amounts of releases must also be used in most analyses of how chemicals may affect their communities. In order to make meaningful comparisons between years and to evaluate progress, we need to have a consistent basis for reporting year-to-year.
- **A small release does not necessarily mean a small risk.**
  - The Environmental Protection Agency's Risk Screening Environmental Indicators (RSEI) program is built in large part on the premise that a small amount of releases of a more toxic or hazardous chemical can be more dangerous than a larger release of a less toxic substance. This allows for more efficient prioritizing of reduction programs or projects with the aim of reducing overall hazard or risk. The RSEI program relies exclusively on TRI data and would be considerably less effective with the proposed Form A changes that would remove numerical reporting for some small releases of some highly toxic chemicals.
  - For example, the highest reportable amount eliminated from reporting in Delaware under this proposal is a report for naphthalene, a newly listed carcinogen in 2004. The next highest amount is a report for chromium VI compounds, a carcinogen and toxic metallic compound more toxic than naphthalene. The third is a report for nickel compounds, also a carcinogen and even more toxic than chromium compounds. Fifty-seven percent of the reports in Delaware for non-PBT carcinogens could be affected by this proposal for the 2004 reporting year.
  - Another reason the Agency should be concerned about these small facilities is that some of their releases consist of Hazardous Air Pollutants (HAPs) regulated under the Clean Air Act. The national, regional, and local modeling done to predict ambient



concentrations of these chemicals uses TRI data and is likely to be affected by sources dropping out—even sources of 5,000 pounds per year or less could have a significant impact on the modeling. EPA's documentation for this proposal does not indicate that the Agency has even considered the impact of collecting less data on releases of HAPS, or on the Agency's ability to track and potentially regulate those chemicals. It is difficult to believe that the state or federal air program offices would want to sacrifice the collection of these data in TRI—particularly since it is the only chemical- and site-specific database the Agency has for these substances.

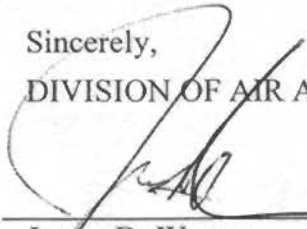
**The Agency has also requested comment on defining the Annual Reportable Amount.**

- **We believe that Section 8.8 data should be included in the Annual Reportable Amount for non-PBT's.**
  - Current thresholds for Form A reporting for non-PBT's ignore non-production-related waste. One-time or periodic activities such as dismantling refractory furnaces and other remediation/maintenance activities can lead to significant releases to the environment, even at small facilities, as can catastrophic accidental releases. However, these activities are not considered in calculating production-related waste. Depending on the circumstance, an accidental release might not even be included in the threshold for TRI reporting. Imagine the scenario in which the Bhopal Union Carbide facility was located in the U.S., but did not have to report a deadly catastrophic 40 ton release to TRI because the rest of its activities were small enough to meet the 5,000 pound Form A threshold. This condition should be corrected.
  - Although the Section 8.8 release amounts are not direct results of production activities, these releases are still releases as a result of the facility doing business manufacturing, processing or otherwise using the TRI-listed chemical. As such, the release of the chemical should be accounted for in the total amount reported by the facility for non-PBT chemicals.

We respectfully request that you withdraw the proposal to expand the use of Form A.

We support and request implementation of a proposal to include Section 8.8 amounts in calculating the Annual Reportable Amount for non-PBT chemicals.

Sincerely,  
DIVISION OF AIR AND WASTE MANAGEMENT



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James D. Werner  
Director

Attachment

Cc: John Parker, DNREC

**ATTACHMENT A****DELAWARE FORM A THRESHOLD IMPACT ANALYSIS**

CURRENT FORM R's	302	
CURRENT FORM A - NO PBT's	52	WILL PROBABLY REMAIN FORM A
CURRENT FORM R PBT's	59	POTENTIAL TO BECOME FORM A - IF ZERO RELEASE
CURRENT FORM R PBT's - NO RELEASE	17	COULD BECOME FORM A - NO RELEASE REPORTED
FORM R's UNDER 5,000	89	COULD BECOME FORM A
TOTAL FORM R's CONVERTED TO FORM A	106	(17+89)
PERCENT FORM R's CHANGED TO FORM A	35%	(106/302)
PERCENT PBT's CONVERTED TO FORM A	29%	(17/59)
TOTAL POSSIBLE FORM A's	158	(52+17+89)
TOTAL 2004 REPORTS	354	(302 FORM R + 52 FORM A)
REMAINING FORM R's	196	(354 -158)

POTENTIAL DATA LOSS		
	POUNDS	
ON-SITE RELEASES IN NEW FORM A's	54,667	
TOTAL TRI WASTE IN NEW FORM A's	121,340	